Exhibit 50

THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

****

IN RE: PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION

MDL DOCKET NO. 01CV12257-PBS

****

THIS DOCUMENT RELATES TO: ALL ACTIONS

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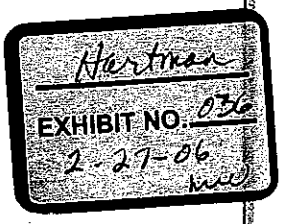
DEPOSITION OF MICHAEL T. MULREY

JANUARY 5, 2006



C O N F I D E N T I A L

DEPOSITION of MICHAEL T. MULREY, a witness called on behalf of the Defendant Johnson & Johnson pursuant to the Federal Rules of Civil Procedure, before Judith McGovern Williams, Certified Shorthand Reporter, Registered Professional Reporter, Certified Realtime Reporter, Certified LiveNote Reporter, and Notary Public in and for the Commonwealth of Massachusetts, at the offices of Robins, Kaplan, Miller & Ciresi, L.L.P., 800 Boylston Street, Boston, Massachusetts 02199, on Thursday, January 5, 2006, commencing at 1:38 p.m.

APPEARANCES: HAGENS BERMAN, LLP
Edward Notargiacomo, Esquire
One Main Street, 4th Floor
Cambridge, Massachusetts 02142
617-482-3700 / ed@hagens-berman.com
on behalf of the Plaintiffs

ROBINS, KAPLAN, MILLER & CIRESI, LLP
James S. Harrington, Esquire
800 Boylston Street
Boston, Massachusetts 02199-7610
617-267-2300 / jsharrington@rkmc.com
and
STEVEN E. SKWARA, ESQUIRE
Associate General Counsel
Blue Cross/Blue Shield of Massachusetts
401 Park Drive
Boston, Massachusetts 02215-3326
617-246-3531 / steven.skwara@bcbsma.com
Both on behalf of Plaintiff Blue Cross/Blue Shield of Massachusetts

APPEARANCES (Continued):

PATTERSON, BELKNAP, WEBB & TYLER, LLP
Erik Haas, Esquire
Adeel A. Mangi, Esquire
1133 Avenue of the Americas
New York, New York 10036-6710
212-336-2000 / ehaas@pbwt.com / aamangi@pbwt.com
On behalf of the Defendant Johnson & Johnson

Participating via teleconference:

KELLEY, DRYE & WARREN, LLP
Lorianne K. Trewick, Esquire
101 Park Avenue
New York, New York 10178
212-808-7740
On behalf of the Defendant Dey, Inc.

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EXHIBITS

PROCEEDINGS

MR. HARRINGTON: At this time by stipulation, this deposition transcript will be designated confidential.

MICHAEL T. MULREY, first having been duly sworn, testified as follows in answer to direct examination by MR. HAAS:

Q. Please state your name for the record.
A. Mike Mulrey.
Q. Mr. Mulrey, are you currently employed?
A. Yes.
Q. By whom?
A. Blue Cross/Blue Shield of Massachusetts.
Q. What is your current position?
A. Manager.
Q. Manager of what?
A. The provider reimbursement area within the actuarial department at Blue Cross.
Q. You referred to the actuarial?
A. Actuarial, yes.

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Q. Who is the head of that department?
A. The chief actuary of the department is Rena Vertes.
Q. How do you spell the last name?
A. V-E-R-T-E-S.
Q. Who does she report to?
A. I would probably have to say Alan Maltz, the CFO.
Q. Did you say CFO?
A. Yes.
Q. And who did Mr. Maltz report to?
A. The CEO, which would be Cleve.
Q. Cleve who?
A. Oh, gee. I just had that.
THE WITNESS: Help me with that, Steve, or I am going to die.
MR. SKWARA: It is Killingsworth.
THE WITNESS: Killingsworth.
MR. HAAS: We won't tell him.
THE WITNESS: God, no. Please.
(Laughter.)
THE WITNESS: He is new. He just

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started. Not new, but new in the CEO position.
BY MR. HAAS:
Q. How many people are in the provider relations department?
A. Provider reimbursement department?
Q. Reimbursement.
A. In my group?
Q. Is that different?
A. Yes.
Q. How many people are in the provider reimbursement department?
A. Six.
Q. What does the provider reimbursement department of Blue Cross/Blue Shield of Massachusetts do?
A. We maintain and update the provider, various provider fee schedules on our mainframe systems. We also do analysis work on various fee schedules.
Q. When you say that you maintain and update provider fee schedules, is your department responsible for any negotiation, if any occurs,

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between Blue Cross/Blue Shield of Massachusetts concerning provider reimbursement?
A. No.
Q. Is there a separate department that does that?
A. Yes.
Q. What department is that?
A. Provider contracting.
MS. TREWICK: Hello. This is Lorianne Trewick. Is anyone else on the phone?
MR. HAAS: Yes. Can you say your name one more time? I can't catch that.
MS. TREWICK: Lorianne Trewick.
MR. HAAS: Hi, Lorianne. Welcome back.
MS. TREWICK: Okay.
BY MR. HAAS:
Q. Who is in charge of the provider contracting department?
A. The senior vice president would be Deb Devaux.
Q. How do you spell the last name?
A. D-E-V-A-U-X.

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Q. Is there a division or department or unit of Blue Cross/Blue Shield of Massachusetts referred to as the network development and management department?
A. Yes.
Q. Is that something different or the same as the provider contracting?
A. It is different.
Q. Okay. What is the responsibility of that department?
A. That group is more the provider relations folks.
Q. And when you say "provider relations," what do they do?
A. They are the provider reps that go out and work with the hospitals and the physicians to help them, you know, with all of their issues and --
Q. Is it -- does that group respond to provider complaints or inquiries concerning reimbursement?
A. Sometimes they will go through them --

Q. Okay.
A. -- as their first point of contact.
Q. Which department at Blue Cross/Blue Shield of Massachusetts is responsible today for actually drafting and executing contracts with physicians for the reimbursement of drugs?
A. Provider contracting.
Q. Okay. How long have you been a manager of the provider reimbursement department?
A. October of 2000 through present.
Q. Just stepping back, if you would describe for the record your post high school education and then your post high school employment, leading up to October of 2000.
A. A graduate of St. Anselm's College, B.A. degree.
Q. Any specialty?
A. Business and economics.
And then what was the second part of that question again?
Q. I will follow up. After getting -- obtaining your B.A., have you obtained any other

educational degree?
A. No.
Q. Have you taken any courses relating to the reimbursement of physician-administered drugs?
A. No.
Q. Have you taken any courses relating to prescription drugs generally?
A. No.
Q. What was your first employment after graduating from college?
A. Oh, God.
MR. HARRINGTON: If you need a minute to remember back that far, Mike.
THE WITNESS: It was a while.
(Laughter.)
A. I am going to say it was probably with Aetna as a claims examiner in the auto industry back then.
Q. Okay. For what years did you hold that position approximately?
A. All right. Probably '79 to '81.
Q. What did you do next?

A. Worked for a company by the name of Barrow Industries, which is a wholesaler of drapery and carpeting, I think is what it was, and that was from probably, oh, '91 -- excuse me -- not '91 -- what did I say?
Q. '81?
A. The first one -- yes, '81. So that was from '81 to '87.
Q. Okay. What did you do next?
A. Joined Blue Cross/Blue Shield in 1987.
Q. What was your initial position?
A. Senior financial analyst.
Q. What department were you in?
A. Finance department.
Q. What were your responsibilities as a senior financial analyst in the finance department?
A. We maintained all the financial information for our health centers back in the early -- late '80s, early '90s.
Q. What is a health center?
A. They were the staff model HMOs that Blue

Cross owned through their Medical East/ Medical West Corporation back in the late '80s, early '90s.
Q. When you referred to a staff model HMO, did Blue Cross/Blue Shield of Massachusetts own both pharmacies and physician groups as part of that HMO?
A. I can tell you there were pharmacies within the physical buildings themselves, and the physicians themselves were, as far as I knew, they were salaried through Blue Cross or through Medical East/Medical West.
Q. So the physicians were employees of the --
A. Yes.
Q. -- clinics?
A. Yes.
Q. And those clinics were owned by Blue Cross/Blue Shield of Massachusetts?
A. Yes.
Q. Now I am sorry, was it Medical East/Medical West you referred to?

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A. Yes.
Q. What is that?
A. That was a corporate name under which the staff model HMOs were kind of set up under.
Q. Was Medical East/Medical West a subsidiary of Blue Cross/Blue Shield of Massachusetts?
A. Yes.
Q. A wholly-owned subsidiary?
A. I'm not sure on that.
Q. Do you recall who was in charge of Medical East and West from the late '80s and early '90s?
A. Each health center had its own executive director. I am trying to think. There was a senior group above them. Oh, I want to say it had its own separate kind of president, if you will, for Medical East/Medical West. I just for the life of me can't think of the -- it was a man at the time I was there -- his name.
Q. Did this, the president of Medical East and West, report in to someone in Blue Cross/Blue

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Shield?
A. Yes. As far as I knew, yes.
Q. Do you know who that was?
A. No.
Q. How many health centers were there?
A. There were eight, four in the west, four in the east.
Q. And when you say east and west, are we talking east and west of Massachusetts?
A. Yes. East and west. West of Worcester and east of Worcester, if you will, hence Medical East/Medical West.
MR. HARRINGTON: They are from out of town.
MR. HAAS: I am thinking Mississippi versus -- actually I grew up in Lexington, so.
MR. HARRINGTON: West of Worcester is the west coast here.
(Laughter.)
THE WITNESS: So he knows where Worcester is.
BY MR. HAAS:

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Q. So what in particular did you do with respect to the maintenance of financial information for the health centers?
A. We compiled, you know, each health center had its own kind of senior financial analyst that was in charge of compiling kind of their financial statements at the close of each month, so your profit and loss statements, your balance sheets and such.
Q. All right. Those P & L's, were they consolidated with Blue Cross/Blue Shield's?
A. Yes. We would send them up to corporate, and somewhere that would happen.
Q. Were you responsible for all of the health centers or particular ones?
A. Just one that I worked out of.
Q. So you actually worked at the site?
A. Yes.
Q. Which one was that?
A. At Braintree.
Q. And what was the nature of that site? Was it a hospital, a pharmacy, a clinic, all

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three?
A. It was physician offices. The pharmacy was in the building as well, a small lab area.
Q. Just to get the time frame down, this is from 1987 until about what time?
A. About '91.
Q. At this time did you move on to another position?
A. Yes.
Q. What was that?
A. I moved on to become a business analyst under the HMO Blue information systems area.
Q. Okay. Did Blue Cross/Blue Shield of Massachusetts spin off, sell, or otherwise disband the staff model HMOs in 1991?
A. Not in '91, no.
Q. Did there come a point in time that they did?
A. Yes.
Q. When was that?
A. I think it was in the time frame of '96-'97.

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Q. In the 1987 to 1991 time frame when you were the senior financial analyst for the Braintree site, how did the site obtain drugs that were administered in the physician clinics?
A. I don't know.
Q. Do you have an understanding of where they purchased drugs that were sold in the retail pharmacy?
A. No.
Q. As part of your financial analysis that you were doing at Braintree health center, did you incorporate their drug costs into their expenses for the P & L that was consolidated with the Blue Cross/Blue Shield of Massachusetts P & L?
A. I can't recall exactly.
Q. Is it likely that those costs were incorporated?
A. I just can't say for certain.
Q. Was there any process or protocol by which the costs of the parent corporation, Blue Cross/Blue Shield of Massachusetts, were allocated between the corporation and the subsidiaries?

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A. I don't know.
Q. Do you recall whether there were any shared services?
A. Some of the shared services, I know my time was shared.
Q. All right.
A. Other than that, I can't recall in detail any others.
Q. Do you recall whether the Braintree site had its own purchasing department?
A. It did have a purchasing area, but the purchasing area was more along the lines of supplies for the building.
Q. To your recollection, did the purchasing of the drugs and supplies for the clinics and the pharmacies occur through the parent organization?
A. I'm not sure where that happened.
Q. Okay. As part of your work at Braintree, did you gain an understanding as to the costs at which physician-administered drugs could be acquired?
A. No.

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Q. Did you get an understanding of whether or not manufacturers, pharmaceutical manufacturers, gave discounts or rebates to physicians or pharmacies depending upon the volume of drug purchased or the particular leverage of the account?
A. No.
Q. Did there ever come a point in time when you learned -- that you obtained that understanding?
A. Yes.
Q. When was that?
A. It was pretty much at the time when Medicare was reviewing their AWP logic and payment methodology.
Q. And when was that?
A. The 2002-2003 time frame.
Q. Do you recall any discussions in the 1999 time frame with respect to the extent that physicians could obtain discounts and rebates and other incentives on their purchases of drugs?
A. In 1999?

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Q. Yes.
A. No.
Q. Do you recall -- well, we were handed this morning a bunch of documents that we were told were produced from your files. Do you recall did you produce a number of documents from a file recently --
A. Yes.
Q. -- to your counsel? I haven't had the opportunity to review them all, but quickly flipping through them, can you tell me generally what the nature of those documents were that you produced?
A. Can I just look at them real quick?
MR. HAAS: I will tell you what. Why don't I do this. Let's mark as Deposition Exhibit Mulrey 001 a series of documents that were produced to us this morning. They are Bates stamped BCBSMA-AWP-00034 through 181.
(Group of documents, production numbers BCBSMA-AWP-00034 through 000181 marked Exhibit Mulrey 001

for identification.)
(Handing Exhibit Mulrey 001 to the witness.)
BY MR. HAAS:
Q. Mr. Mulrey, I ask that you take a look at what has been marked as Deposition Exhibit Mulrey 001 and tell me whether you recognize those documents.
(Pause.)
(The witness viewing Exhibit Mulrey 001.)
A. Yes, I do.
Q. What are they?
A. It is information that came out of a file that I provided to our legal counsel.
Q. What file was that?
A. This one in particular was a file that we had just -- I think the title of it was Chemo, and it had to do with some discussions with a particular oncologist in our network.
Q. What was the subject matter of those discussions?

A. Blue Cross' reduction from 100 percent of AWP to 95 percent of AWP.
Q. Did that reduction occur in the 1998 time frame?
A. Yes.
Q. And that corresponded to a reduction in the Medicare reimbursement?
A. Yes.
Q. Have you reviewed those documents in preparation for your deposition?
A. I have looked through them. Yes.
Q. And do you recall those documents discussing whether physicians can obtain discounts and rebates to reduce their acquisition cost to below WAC, or wholesale acquisition cost?
A. I know there was some comments in some e-mails to that effect, yes.
Q. Right. Do you recall those discussions and comments in e-mails?
A. Me personally? Once I read this file, yes.
Q. Did it refresh your recollection as to

the communications at that time?
A. At that time, I wasn't in this position.
Q. Okay. How is it that you came across this file?
MR. HAAS: Well, withdraw that question.
Q. Did you receive the e-mails that were in this file in the 1998-1999 time frame?
A. No.
Q. Okay. How is it that you came to be in possession of this file?
A. We were asked to produce discovery materials on any drug-related information. This happened to be a file that one of my staff members had had historically kept.
Q. So this was not documents produced from your own files, but it was documents --
A. Right.
Q. -- produced from the files of a staff member?
A. Yes.
Q. Who is that staff member?
A. Ellen Thompson.

Q. Were you involved at all in the correspondence and communications that are reflected in those e-mails?
A. No.
Q. What was Ms. Thompson's position in the 1998-1999 time frame when she was having these communications?
A. She is an analyst in the provider reimbursement group.
Q. Did she report to you at that time?
A. I wasn't in the role at that time.
Q. Do you recall why --
MR. HAAS: Well, withdraw that question.
Q. In the 1996-1997 time frame when Blue Cross/Blue Shield disbanded or otherwise got rid of its staff model HMOs, do you recall why that was?
A. I mean I'm not -- I wasn't directly involved with that decision, so I mean I just think, my opinion, is that they just wanted to get out from under actually delivering care.
Q. After 1991, did you do any work, any

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analyses, for or in connection with the staff model HMOs?
A. No.
Q. Who was your successor at the Braintree site?
A. I think Walter Hutchinson.
Q. Is he currently with the company?
A. No.
Q. Do you know where he is today?
A. No.
Q. Do you know whether Blue Cross/Blue Shield of Massachusetts received rebates from manufacturers on either the drugs dispensed by the pharmacies that it owned or that were administered by the clinics that it owned?
A. I'm not aware of it. No.
Q. Did Blue Cross/Blue Shield of Massachusetts sell the HMOs?
A. Yes.
Q. To whom?
A. Med Partners.
Q. What type of company was that?

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A. A company that bought physician groups.
Q. A physician practice group company or a venture capital company? Do you know?
A. I don't know, no.
Q. What percentage of --
MR. HAAS: Withdraw that question.
Q. From the 1987 to 1991 time frame where you worked at the Braintree site, what percentage, if you know, of Blue Cross/Blue Shield of Massachusetts's members were serviced in this staff model HMOs as compared to outside the staff model HMOs?
A. Just the Braintree site?
Q. No. All the HMOs, all of the staff model HMOs.
A. I don't recall a percentage.
Q. Was it a majority of the membership --
A. HMOs?
Q. -- that were treated in the staff model HMOs?
A. I really can't recall the total membership on the HMO side, the staff models.

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Q. In the 1987 to 1991 time frame, did you have an understanding as to how Blue Cross/Blue Shield of Massachusetts reimbursed physicians outside the staff model HMO for drugs administered to the members of Blue Cross/Blue Shield of Massachusetts?
A. No.
Q. In 1991 when you became a business analyst in the HMO systems department, --
A. Information systems department.
Q. -- information systems department, what were your responsibilities?
A. My main focus there was working to create a provider credentialing data system.
Q. What is a provider credentialing system? What is that?
A. It is really a database that we could basically track provider credentials and when they needed to be recredentialed.
Q. When you say "credentialed," what does that mean?
A. For our HMO product lines, there are

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certain things that we require the providers to maintain, and this information was stored in this database.
Q. Okay. This is because these physicians were employees of Blue Cross/Blue Shield of Massachusetts, and, therefore, you were required and obligated to maintain this information and maintain their status as credentialed physicians; right?
A. It was also the -- any HMO Blue physician that was outside the staff models, too. We were maintaining their credentials as well.
Q. So does Blue Cross/Blue Shield of Massachusetts have conditions of physician participation in its network which includes a certain level of credentialing?
A. Yes.
Q. Okay.
MR. HARRINGTON: Are you still in the '87 to '91 time frame?
MR. HAAS: I am in the 1991 time frame.
MR. HARRINGTON: Okay.

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MR. HAAS: When he was working as a business analyst.
BY MR. HAAS:
Q. How long were you in that position?
A. Until '94.
Q. And aside from your work in creating this provider credentialing system, what else did you do in that role, if anything?
A. It was more kind of a support -- a support role between end users and programming staff to work with them on any kind of system enhancements that they felt they needed for our processing systems.
Q. All related to this system that you created?
A. Yes.
Q. As part of that work, did you gain an understanding as to how many physicians were members of the staff model HMO as compared to the number of physicians in Blue Cross/Blue Shield's networks outside the HMO?
A. No. I mean it wasn't something that I

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was cognizant of. You were just looking at them as a pool of physicians.
Q. Do you have an understanding of how significant to Blue Cross/Blue Shield of Massachusetts the staff model HMO was in the '91 through '96 time frame?
A. In the '91 to '92 time frame, that was when HMO Blue really was kind of evolved or started. So in the early time frame the membership was, you know, was large. I mean that was basically consolidating all the staff model members as well as members that chose physicians outside the staff models.
Q. So let me just see if I understand it. The 1991 to 1992 time frame, the staff model HMO plan was a significant part of the business of Blue Cross/Blue Shield of Massachusetts?
A. The HMO -- what happened in the '91-'92 time frame is the Medical East and Medical West staff models, and we also had a lot of IPA products out there, they combined them all and created HMO Blue. So those memberships from all

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of those different plans and those staff models were all brought together under the HMO Blue product.
Q. All right. And I guess what I am trying to ascertain is what the relative portion of the membership that were involved in the plans outside the staff model HMO plan as compared to those in.
A. I don't know that.
Q. You don't know?
A. No.
Q. Okay. What did you do after 1994?
A. Joined the provider contracting department.
Q. What was your title?
A. Senior contracting analyst.
Q. What were your responsibilities as a senior contracting analyst?
A. I negotiated contractual agreements with a wide host of ancillary providers.
Q. When you referred to "ancillary providers," what are you referring to?
A. Non M.D.s, nonhospital.

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Q. Would that include pharmacies?
A. No.
Q. Would it include long-term healthcare facilities?
A. I didn't do anything with them.
Q. Nursing homes?
A. Nursing homes, yes.
Q. What other examples are there?
A. Clinical labs, DME providers.
Q. Did the provider contracting department as a whole have any responsibility with pharmacy reimbursement?
A. No.
Q. Okay. What department of Blue Cross/Blue Shield of Massachusetts was responsible for negotiating contracts with retail pharmacies at that time?
MR. HARRINGTON: I object to the form. Go ahead and answer.
Q. If any.
A. When you are saying retail pharmacies, this is where you go into a CVS?

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Q. Yes.
A. We used a contract with a pharmacy benefits manager.
Q. Who was it at that time?
A. At what time?
Q. I am talking the 1994 time frame.
A. '94 -- I'm not certain on this. It could have been Medco, which ended up becoming -- there was a name change there. Maybe not. I'm not sure. Medco -- I know Medco was one of -- one of the names.
Q. Okay. What responsibilities have you had, if any, throughout the course of your career with respect to the reimbursement of pharmacies, either directly or through a PBM network, for drugs dispensed to Blue Cross/Blue Shield of Massachusetts members?
A. I have had none.
Q. Have you had any responsibility with respect to hospital reimbursement?
A. Yes.
Q. What responsibility?

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A. In one of my future roles we haven't got to yet -- so I don't know if you want to wait.
MR. HARRINGTON: I think we should let the suspense build.
(Laughter.)
MR. HAAS: We will let it unfold. I will get to it. Okay.
BY MR. HAAS:
Q. So in addition to your role of negotiating contracts with ancillary providers, what else did you do as a senior contracting analyst in the provider contracting department in the 1994 time frame?
A. That was pretty much it. It was negotiating the contracts, the agreements.
Q. How long were you a senior contracting analyst?
A. Until '98.
Q. During that time frame, did your responsibilities change at all?
A. What changed were the different ancillary provider types I might have had to deal with.
Q. In 1998, what position did you assume?
A. I left the company.
Q. Where did you go?
A. Harvard Pilgrim Healthcare.
Q. What was your position there?
A. A senior contract analyst.
Q. What were your responsibilities in that position?
A. I negotiated agreements with hospitals and risk groups, physician risk groups.
Q. What is a physician risk group?
A. Large physician practices that would enter into risk arrangements with the different plans.
Q. What is a risk arrangement?
A. It is -- well, what is a simple way of putting it? You set certain performance levels they have to meet. If they meet those performance levels, you know, there is money that is shared between the hospitals and the physician groups.
Q. Is this a withhold program?

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A. Some were withhold programs.
Q. Were they capitated programs?
A. Yes. Some were capitated programs.
Q. So in the 1998 time frame, Harvard Pilgrim was reimbursing physicians under capitated and withhold programs?
A. Yes.
Q. Did those reimbursements encompass the administration of drugs to the members of Harvard Pilgrim?
A. I don't know.
Q. Did the contracts that you negotiated encompass reimbursement of pharmaceuticals?
A. We didn't get into kind of the fee schedule level of detail. It was more at a kind of an overall PM/PM level.
Q. Understanding that under the capitated and withhold programs that you would set PM/PM amounts, per patient/per month amounts, was it your understanding that the contract encompassed all the reimbursements to the particular clinics with which you contracted, including drugs?

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A. There might have been -- there -- there might have been variations where certain things, certain services were excluded from capitated arrangements.
Q. And that would be reflected in terms of a rider to the agreement?
A. Right.
Q. And you would be responsible for negotiating both the contract and the rider?
A. Negotiating what is included as under the cap and what would be excluded in paid fee for service, if you will.
Q. Right. Sitting here today, can you recall whether any of the capitated and withhold amounts pertained to physician- administered drugs?
A. I can't.
Q. Has Blue Cross/Blue Shield of Massachusetts to your knowledge ever engaged in any capitated reimbursement programs or withhold programs that encompassed physician-administered drugs?

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A. Yes.
Q. When? Over what time frame did Blue Cross/Blue Shield of Massachusetts provide reimbursement to physicians that -- for physician-administered drugs under a capitated and/or withhold plan?
A. I mean I can only talk of what I know today. I don't know how far back some of these arrangements go today.
Q. All right.
A. There are three that I know today where, one, the drugs are included, and two, the drugs are excluded.
Q. When you say one, are you talking about one capitated plan?
A. One capitated arrangement.
Q. And who is that capitated arrangement with?
A. A physician group by the name of Riverbend.
Q. Do you have an understanding of how long that capitated arrangement for the reimbursement

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of physician-administered drugs has been in place?
A. I don't.
Q. Historically do you have any understanding of how long Blue Cross/Blue Shield of Massachusetts has offered capitated plans for the reimbursement of physician- administered drugs?
MR. HARRINGTON: I object to the form. But go ahead. You can answer.
A. The kind of capitated arrangements, risk deals, a lot of them were originally started in the mid '90s, and over the course of these, you know, the past few years, we have very few of these types of arrangements still in place today.
Q. In the mid '90s, what percentage of Blue Cross/Blue Shield's reimbursement of physician-administered drugs were through capitated or withhold plans?
A. I don't know.
Q. Was it a majority of the plans at that time?
A. I don't know.

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Q. In addition to the capitated and withhold plans, to your knowledge has Blue Cross/Blue Shield of Massachusetts ever reimbursed physicians on a percentage-of- charges basis --
A. No.
Q. -- for physician-administered drugs?
A. No.
MR. HARRINGTON: Erik, when you reach a convenient point, can we take a short break?
MR. HAAS: Sure. Right now is fine.
MR. HARRINGTON: Okay.
(Recess taken at 2:22 p.m.)
(Recess ended at 2:34 p.m.)
MR. HAAS: Back on the record.
BY MR. HAAS:
Q. Let's just step back. What methodologies did Blue Cross/Blue Shield of Massachusetts use to reimburse physicians for drugs administered to its members from the 1991 time frame until today?
MR. HARRINGTON: I am just going to object because it is so broad.

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Q. If you would just list the various methodologies that you're aware of over time from 1991 to present, and I will follow up with specific questions about those.
A. What I knew in '91, I didn't know how any of it -- I mean I came into my role in 2000.
Q. All right.
A. From that point forward, I know how we reimburse our physicians, but prior to that, I didn't have any direct knowledge of drug reimbursement to physicians.
Q. I am not limiting it to direct knowledge.
A. Okay.
Q. I am limiting it to -- my question goes to sitting here today what methodologies are you aware of that Blue Cross/Blue Shield of Massachusetts utilized to reimburse physician-administered drugs that were administered to its members from 1991 to today.
A. Average wholesale price.
Q. They reimbursed on the basis of average

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wholesale price?
A. Yes.
Q. That is one methodology?
A. Yes.
Q. Are you aware of another methodology?
A. That Blue Cross reimbursed? No.
Q. You mentioned before the break that Blue Cross/Blue Shield of Massachusetts reimbursed physicians under capitated programs for drugs?
A. Yes.
Q. So that is a second methodology?
A. Okay.
Q. Capitation; right?
A. Yes.
Q. You also testified that there were withhold plans; correct?
A. Yes.
Q. So that is a third methodology?
A. Okay.
Q. Okay. Are there any other methodologies utilized by Blue Cross/Blue Shield of Massachusetts or that were from 1991 through

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today?
A. I mean -- no. I mean AWP, and in my opinion, like a fee-for-service type arrangement. A claim is submitted, and it is paid based on the AWP that we have on file.
So when you're talking capitation and risk, those are kind of different ways of reimbursing providers. Fee for service is another way to reimburse providers. Or fee-for-service reimbursement on drugs is based on AWP.
Q. I understand the point you are trying to make.
A. Okay.
Q. And I understand that Blue Cross/Blue Shield has reimbursed some claims based upon AWP --
A. Yes.
Q. -- for drugs that were administered in the office, but what I am trying to get an understanding of is what other methodologies it also used. You have mentioned capitation?
A. Yes.

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Q. And you mentioned withholds?
A. Yes.
Q. My question is are there any other methodologies that Blue Cross/Blue Shield utilized to reimburse physician- administered drugs that were administered to its members?
A. I'm not aware of any others other than those three.
Q. So we have the fee for service, capitation, withhold, and then the staff model HMO concept that we discussed earlier?
A. Yes.
Q. Okay. How long were you at Harvard Pilgrim Healthcare?
A. Two years: '98 to 2000.
Q. During that time frame, was your title always senior contract analyst?
A. Yes.
Q. Did your responsibilities change at all over that time frame?
A. No.
Q. What did you do after that?

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A. Came back to Blue Cross in my current role.
Q. Okay. Your current role once again is the manager of provider reimbursement?
A. Yes.
Q. Let me back up for a minute. When you worked as a senior contracting analyst for the provider contracting department in negotiating contracts with ancillary providers, what methodology did Blue Cross/Blue Shield of Massachusetts use to reimburse for drugs that were administered by those entities to its members?
A. By the ancillary providers --
Q. Yes.
A. -- to their --
Q. Yes.
A. There weren't drugs on the ancillary provider fee schedules.
Q. So to the extent that an ancillary provider, i.e., a nursing home, administered drugs to a member of Blue Cross/Blue Shield's plans, they were not reimbursed by Blue Cross/Blue Shield

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for those drugs?
A. I --
MR. HARRINGTON: Objection. But go ahead.
A. I didn't deal with nursing home contracting during that time frame.
Q. Okay. I thought you said you had.
A. That was -- I was just giving examples of various ancillary provider types, but that wasn't one that I had any negotiating deals with.
Q. Okay. Let's be specific. In 1994 to 1998, what ancillary providers did you negotiate reimbursement contracts with?
A. Clinical labs.
Q. I am sorry. What was that?
A. Clinical laboratories, DME vendors, physiological lab providers, optometrists, radiation oncology, and one or two smaller ones. I want to say chiropractor.
Q. Did the contracts with the radiation oncologists involve the reimbursement of physician-administered drugs?

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A. No.
Q. Okay. What are your responsibilities in your current role?
A. We maintain and update the various provider fee schedules, and we do analysis on various fee schedules.
Q. Do you have any involvement in the reimbursement of physician-administered drugs under Blue Cross/Blue Shield's Massachusetts capitated plans?
A. No.
Q. So your work in provider reimbursement is solely related to fee for service?
A. Yes.
Q. What department, division or unit of Blue Cross/Blue Shield of Massachusetts is responsible for Blue Cross/Blue Shield of Massachusetts' capitation plans or withhold plans involving the reimbursement of physician-administered drugs?
A. They would be part of the provider contracting negotiations.

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Q. To your knowledge, are the claims that are reimbursed under the capitated plans recorded in the TPS claim database of Blue Cross/Blue Shield of Massachusetts?
A. Are the capitated plans?
Q. Yes.
A. Yes, they're recorded.
Q. Are you familiar with that database?
A. I'm familiar with the claims database, yes.
Q. All right. Do you have an understanding of how one would determine --
MR. HAAS: Withdraw that.
Q. Do you have an understanding of how one could determine from the database which claims that were submitted pertained to capitated claims?
A. Yes.
Q. How would one do that?
A. There is an indicator on the claim that would mark it as an encounter.
Q. Okay. When you say there is an indicator on the claim, what do you -- on the

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claim record you are talking about?
A. The claim record.
Q. By an indicator, are you referring to a field?
A. Yes.
Q. And what is the name of that field?
A. I don't know offhand.
Q. And when you say it would mark it as an encounter, what does that mean?
A. Meaning it is not going to have a paid amount on it. It comes through the system and is processed for utilization purposes, but we're not going to send a check out to the provider. He has already been paid.
Q. So in the paid amount field, there would be some entry other than a dollar figure?
A. The paid amount field would probably be zero. The allowed field would have a fee amount.
Q. Okay. So what is it that you do in order to maintain and update provider fee schedules?
A. We physically create data sets of codes,

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fees, effective dates, and other pertinent information that we need to load to our mainframe systems, our TPS systems.
Q. When you say you physically create these data sets, do you create that in a database format?
A. It's -- yes. A database format that we have to basically format to upload into the mainframe systems.
Q. All right. These data sets that you create, do they include reimbursement for both services and fees -- services --
MR. HAAS: Let me withdraw that question.
Q. These data sets that you create, do they encompass reimbursement amounts for both services and drugs administered to Blue Cross/Blue Shield members?
A. That's the mechanism in which we can upload any fee, whether it is a service or a drug fee.
Q. Does Blue Cross/Blue Shield of

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Massachusetts maintain fee schedules on a provider basis or on some other basis?
A. Some other basis.
Q. What is the other basis?
A. Some are by product; some are by provider type and specialty.
Q. When you say "by product," what are you referring to?
A. For physician reimbursement, we have an HMO fee schedule, a PPO fee schedule, an indemnity fee schedule, a Medicare HMO fee schedule.
Q. So when we are referring to product, you are referring to the various benefit plans that Blue Cross/Blue Shield of Massachusetts offers to its members?
A. Yes.
Q. When you are referring to provider type, what are you referring to?
A. There are separate ones, mainly for the ancillary providers, for your clinical lab, for your DME vendors, for your chiros. They are unique to them, their contract.

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Q. So with respect to the reimbursement of physician-administered drugs, at any point in time is it then accurate that Blue Cross/Blue Shield has only those --
MR. HAAS: Withdraw that question.
Q. How many fee schedules currently does Blue Cross/Blue Shield of Massachusetts maintain for the fee-for-service reimbursement of physician-administered drugs?
A. Approximately 45.
Q. What determines -- what distinguishes the 45 fee schedules from each other?
A. Again a lot of them are driven by unique provider type, specialty contracts around the ancillary world. Operationally how we have to point certain claims to certain things within our systems caused us to kind of create two fee schedules in some instances for those five main ones I gave you there or the four main ones. There is an HMO-based fee schedule. There is also an HMO site-of-service schedule. There is a indemnity-based fee schedule. There is an

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indemnity site-of-service fee schedule. That is all because of how we reimburse our physician networks.
Q. Let me set that issue aside for a second.
A. Yes.
Q. With respect to the reimbursement for physician-administered drugs in physician offices, --
A. Yes.
Q. -- of those 45 fee schedules, how many of those schedules pertain solely to the reimbursement of physicians for drugs administered in their offices?
A. Those four main ones.
Q. So is it fair to say that with respect to the fee-for-service reimbursement Blue Cross/Blue Shield's policy is to provide the reimbursement terms to physician practices on a take-it-or-leave-it basis?
A. I wouldn't say it is quite that strong. I mean we provide our providers with a contract

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and fee schedules, and it is their decision whether or not they choose to sign it.
Q. What negotiation of the fee schedule amounts does Blue Cross/Blue Shield of Massachusetts engage in with physicians, if any?
A. None.
Q. So there is no variability in the fee schedules at the provider level; is that correct?
A. That's correct.
Q. How long has that been the policy and practice of Blue Cross/Blue Shield of Massachusetts with respect to fee-for- service reimbursement?
A. It goes back to 1995.
Q. What was the impetus of the adoption in 1995 of this take-it-or-leave-it or no-negotiation policy?
A. Well, when the fee schedules were based on RBRVS back in '95 and have been ever since.
Q. Now I want to be clear. When I am talking about fee schedules, I am talking about both the reimbursement for the services as well as

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the reimbursement for the drugs. Okay?
Now are there separate fee schedules at Blue Cross/Blue Shield of Massachusetts pertaining to the reimbursement of services versus the reimbursement of drugs?
A. Separate fee schedules?
Q. Yes.
A. For drugs?
Q. Yes.
A. No.
Q. Okay.
A. No.
Q. So when we are talking about fee schedules --
A. Yes.
Q. -- and we have been talking about fee schedules, your understanding of that term is to be the schedule of reimbursements for both drugs and services; correct?
A. Yes.
Q. Okay.
MR. HARRINGTON: This is in the self --

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the physician-administered drug area?
MR. HAAS: Yes. With respect to reimbursement of physicians.
Q. Prior to 1995, did Blue Cross/Blue Shield of Massachusetts negotiate fee-for-service reimbursement for physician-administered drugs on a provider -- at a provider level?
A. I'm not aware of it.
Q. When you say you are not aware of it, sitting here today, could you say one way or the other whether they did?
A. I can't say.
Q. What is your basis for understanding that there was a change in practice or policy as of 1995?
MR. HARRINGTON: Well, objection. Go ahead.
A. Prior to that, the fee schedules were usual and customary, and it was felt, you know, to administer those was a burden, so they moved to a more standardized nationally-recognized payment methodology.

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Q. All right. When you say prior to that the fee schedule was usual or customary, what does that mean?
A. They, in the case of claims being submitted, there would be a provider profile saying, you know, he can get paid up to this level, and we would look against the -- a level two reimbursement, level two being our indemnity reimbursement. If it fell within that, that was his level of reimbursement.
Q. So prior to 1995, physicians were reimbursed on a charge basis?
A. No. It wasn't charge. It was usual and customary. I mean his charges up to a ceiling, if you will. Right.
Q. All right. And how did Blue Cross/Blue Shield of Massachusetts determine the usual and customary ceiling that it used to determine fee-for-service reimbursement prior to 1995?
A. I can't say for certain. I wasn't, you know, involved at that point.
Q. But it was your understanding that that

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was the methodology --
A. Yes.
Q. -- used before --
A. Yes.
Q. -- the fee schedule reimbursement?
A. Yes.
Q. So that is yet another way of reimbursement, another methodology Blue Cross/Blue Shield of Massachusetts used in the 1990s; correct?
A. Yes.
Q. Okay. So let me just see if I have the going list now. We have usual and customary reimbursement on a fee-for- service basis prior to 1995; we have fee schedule reimbursement after 1995 for the fee-for-service reimbursement; we have capitation; we have withholding; and we have the staff model concept.
Are there any -- is that a comprehensive list to your knowledge of the methodologies used by Blue Cross/Blue Shield of Massachusetts to reimburse physician-administered drugs

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administered to its members in 1991 through today?
A. I would say yes.
Q. Okay. So the shift from usual and customary to the fee schedule was in part due to the administrative simplicity with using fee schedules?
A. Yes.
Q. Now focusing on these four different schedules that you have identified, how do they differ, if at all, with respect to the amounts that are afforded to physicians for the administration of drugs to Blue Cross/Blue Shield of Massachusetts members?
A. The drug fees on all four schedules right now are all equal, the same.
Q. Okay. Currently today what is the amount in the fee schedules that is afforded to physicians for the administration of drugs to Blue Cross/Blue Shield of Massachusetts members?
A. You are asking what the AWP was set at?
Q. Is there a constant methodology utilized for all drugs in each of the fee schedules?

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A. Right.
Q. And is that methodology for the fee-for-service reimbursement based upon a percentage of AWP?
A. Yes.
Q. And what is that percentage?
A. 95 percent.
Q. How long has Blue Cross/Blue Shield of Massachusetts utilized a reimbursement amount of 95 percent of AWP to reimburse all drugs on all its fee schedules?
A. Since '98 when Medicare made their change.
Q. Prior to 1998, what methodology did Blue Cross/Blue Shield of Massachusetts use to reimburse -- to determine the reimbursement amounts for drugs on its fee schedules?
A. I don't -- I'm -- let me back this up. What methodology did we use?
Q. When I say methodology, --
A. Yes.
Q. -- you have referred to 95 percent of

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AWP --
A. Yes.
Q. -- as the basis for the reimbursement amounts in the fee schedules for drugs, and I'm referring to that as methodology.
A. Okay.
Q. So 95 percent of AWP methodology.
A. Okay.
Q. So let me ask the question.
Prior -- from 1995 through 1998, what was the basis by which Blue Cross/Blue Shield of Massachusetts calculated the amounts in its fee schedules for physician-administered drugs?
A. 100 percent of AWP.
Q. Starting in 1995, how did Blue Cross/Blue Shield of Massachusetts determine the AWP it used to calculate the amounts in its fee schedules?
A. We basically just used Medicare's AWP.
Q. When you say "Medicare's AWP," what are you referring to?
A. Medicare's AWP fee schedule for their J

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codes.
Q. Okay. So is it correct that Blue Cross/Blue Shield of Massachusetts did not calculate its own dollar amounts in the fee schedule but simply adopted the amounts that were specified in the Medicare fee schedules?
A. Yes.
Q. Okay. There came a point in time when that changed; correct?
A. What changed?
MR. HAAS: Well, let me withdraw that question.
Q. Does Blue Cross/Blue Shield of Massachusetts still use Medicare's amounts, dollar amounts, in its fee schedules?
A. No.
Q. What does Blue Cross/Blue Shield of Massachusetts currently do to determine the 95 percent of AWP used to calculate -- to determine the amounts in its fee schedule for the reimbursement of physician-administered drugs?
A. We are using a vendor to provide us

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pricing.
Q. Which vendor?
A. R.J. Health.
Q. How to your knowledge does R.J. Health derive its AWPs from?
A. I don't know.
Q. Does R.J. Health calculate a dollar amount which is then provided to Blue Cross/Blue Shield of Massachusetts?
A. Yes.
Q. So Blue Cross/Blue Shield of Massachusetts does not duly calculate 95 percent of AWP --
A. No.
Q. -- for each drug?
A. No.
Q. Is there someone at Blue Cross/Blue Shield of Massachusetts who is familiar with the methodology that R.J. Health actually uses to come up with that number that Blue Cross/Blue Shield of Massachusetts uses in its fee schedule?
A. I'm not sure.

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Q. When did Blue Cross/Blue Shield of Massachusetts first begin to use R.J. Health as a vendor to determine reimbursement amounts for physician- administered drugs?
A. 2005.
Q. And Blue Cross/Blue Shield of Massachusetts started using R.J. Health because Medicare no longer reimbursed for physician-administered drugs on an AWP basis; correct?
A. Yes.
Q. In the 2004 time frame before Medicare switched its reimbursement methodology, did Blue Cross/Blue Shield of Massachusetts give any consideration to revising its reimbursement methodology for physician-administered drugs?
A. Yes.
Q. What involvement, if any, did you have in that process?
A. I completed an analysis.
Q. What analysis was that?
A. An analysis of ASP pricing that Medicare was proposing against our utilization.

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Q. When you say "against your utilization" --
A. The drug utilization.
Q. What is that?
A. Drug claims.
Q. What was the purpose of that analysis?
A. To determine what the financial difference would be to price drugs at ASP versus AWP.
Q. All right. And was the purpose of that analysis to determine the financial impact on Blue Cross/Blue Shield of Massachusetts or the providers or both?
A. Both.
Q. Okay. That analysis that you conducted, what assumptions went into it with respect to the reimbursement that would be afforded by Blue Cross/Blue Shield of Massachusetts with respect to drugs and services in the event it adopted an ASP methodology?
A. Could you ask that again? I am sorry.
Q. Sure. Your analysis basically involved

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a change in the status quo analysis? You were contemplating what would happen if Blue Cross/Blue Shield of Massachusetts switched to an ASP environment; correct?
A. Yes.
Q. And in doing so and in developing that analysis, did Blue Cross/Blue Shield of Massachusetts make any assumptions with respect to whether it would change the level of reimbursement provided for its services if it switched to an ASP reimbursement methodology for drugs?
A. What do you mean by services, a change in services?
Q. A change of the services or fees associated with administering drugs.
A. Okay. That was part of the analysis.
Q. All right.
A. Yes.
Q. So your analysis that you did involved an assessment of the financial impact if Blue Cross/Blue Shield increased the servicing fee --
A. Yes.

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Q. -- associated with the administration of drugs and decreased the drug reimbursement amount under the ASP methodology; correct?
A. Yes.
Q. What were the conclusions that you derived from your analysis?
A. In total, the level of reimbursement would go down.
Q. By how much as a percentage basis?
A. Oh, I don't have that in front of me.
Q. Was --
A. I think it is part of the material you have there.
Q. Okay. We will take a look at that in a second. Let me back up for a minute.
The reason why you assumed that the reimbursement for the servicing fees would go up was because Medicare likewise in making a switch to ASP was increasing the reimbursement for the services associated with drug reimbursement; correct?
A. Yes.

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Q. And that was in part because of the recognition that historically the drug reimbursement under the AWP methodology was used to subsidize inadequate reimbursement on the servicing fees; correct?
MR. HARRINGTON: Objection.
Go ahead and answer if you know.
A. I know now.
Q. When you prepared your analysis, --
A. We knew.
Q. -- you understood that; correct?
A. Yes. Because of all the literature that was out there from Medicare, so yes. At that point in time, I knew that.
Q. All right. How did you come to learn that?
A. It was when Medicare was going down the road of revamping and looking at how they were going to reimburse their drugs.
Q. You personally, prior to engaging in this project, did you have an understanding of whether under Medicare it was understood that the

reimbursement for the servicing fees was inadequate to cover the costs of administering the drugs, and, therefore, the drug reimbursement was set at an amount to provide margin to cover the costs associated with the administration of the drugs?

MR. HARRINGTON: Objection. Go ahead.

A. Again it was back at the time when Medicare was doing their analysis that this information was brought, and I started reading about it and understanding AWP reimbursement and the -- and kind of the differences between that and the drug administration reimbursement.

Q. So you personally had no understanding of that prior to the time frame when you were engaged in this project?

A. That's correct.

Q. All right. As at any time in your role, either at Blue Cross/Blue Shield of Massachusetts or at Harvard Pilgrim, did you review studies or surveys or analyses done by the OIG of the HHS with respect to drug costs reimbursement?

A. No.

Q. Do you know whether there is any department at Blue Cross/Blue Shield of Massachusetts that does review and monitor OIG and GAO and other government studies pertaining to the reimbursement of drugs?

A. I can't say for certain if there is any one particular area that looks at that stuff.

Q. So at least in the 2004 time frame, you obtained an understanding that Medicare had reimbursed the services associated with --

MR. HAAS: Excuse me. Withdraw that.

Q. So in 2004, you learned that Medicare had reimbursed drugs at an amount that was intended to subsidize or cross subsidize, I believe is the term used, --

MR. HARRINGTON: Objection.

Q. -- the inadequate reimbursement of the servicing fee; correct?

MR. HARRINGTON: Objection.

A. Yes.

Q. And based upon your analysis, you

determined that following Medicare to the ASP methodology, that would result in a decrease in overall reimbursement afforded to physicians; is that correct?

A. Yes.

Q. And as a consequence of your analysis, is it correct that Blue Cross/Blue Shield of Massachusetts elected not to shift to the ASP reimbursement methodology?

A. At this time, yes.

Q. Okay. And the decision was made not to shift because Blue Cross/Blue Shield of Massachusetts determined that it was not in its best interests to reduce the reimbursement to physicians; correct?

MR. HARRINGTON: Objection. Go ahead.

A. I mean we normally follow industry standards, and Medicare has moved to ASP. Right now from our perspective, we don't see that as an industry-acceptable standard just yet.

Q. Isn't it correct that you in fact have followed Medicare's standard since 1995 and

including this shift in reimbursement from 100 percent to 95 percent AWP?

A. That's correct.

Q. So what you did now currently in 2004 was a break in your practice of Blue Cross/Blue Shield of Massachusetts's practice in following Medicare; correct?

A. Yes.

Q. What are the factors --

MR. HAAS: Withdraw that question.

Q. In deciding not to shift to an ASP-based reimbursement for physician-administered drugs, what input, if any, did Blue Cross/Blue Shield of Massachusetts obtain from physicians with respect to how that change could or would impact their practices?

A. I'm not aware of any direct impact or conversations that were held with any physicians.

Q. Do you have an understanding of whether Blue Cross/Blue Shield of Massachusetts has special committees that it maintains with physician organizations, such as MASCO?

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A. Yes. There are -- you know, folks that deal with -- I don't know if it is MASCO, Mass. Medical Society. I mean there are groups within the company that deal with those types of societies on a regular basis.
Q. All right. And to your knowledge, did Blue Cross/Blue Shield of Massachusetts solicit the views of those societies in connection with the assessing whether or not to change the reimbursement?
A. To my knowledge -- no, I don't know.
Q. You don't know?
A. No, I don't know.
Q. Let's back up then. Who was involved to your knowledge in the decision not to switch to an ASP-based reimbursement methodology for physician-administered drugs?
A. When you are saying who was involved, can you clarify what that is? I don't know if you -- a group, a name?
Q. Let's start -- yes. I basically want the names of the people that were involved in the

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discussions, deliberations, considerations of whether or not Blue Cross/Blue Shield of Massachusetts should switch its reimbursement methodology for physician-administered drugs from an AWP- based methodology to an ASP-based methodology.
A. There is a group that is called provider financial strategy work group.
Q. What department, division or unit of the company is that?
A. It is a cross functional group of leaders within the company.
Q. Who are the members of that group?
A. Deb Devaux.
Q. What is her title?
A. Senior vice president of contracting.
Q. Okay. Who else?
A. Rena Vertes, chief actuary.
Q. Who else?
A. Andrana Shandley, vice president, actuary.
Q. Who else?

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A. Steve Fox, director, provider relations.
Q. Who else?
A. Sheila Cizaukas.
Q. Can you spell that?
A. C-I-Z-A-U-K-A-S.
MR. HARRINGTON: Remember I said don't guess.
THE WITNESS: Yes.
A. She is provider contracting.
Q. Who else?
A. Chris Collins, provider contracting; Michael Carr, vice president, sales.
Let me see if I am missing anybody.
(Pause.)
A. That's the core group.
Q. Did you also -- were you also a member of this work group?
A. Yes.
Q. Did the work group provide its ultimate conclusion not to switch to an ASP reimbursement methodology to the Blue Cross/Blue Shield of Massachusetts board or executive management

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committee?
A. No. The decision was made here.
Q. So ultimately the decision was made not to reduce reimbursement in 2005; correct?
A. Yes.
Q. When was the first time Blue Cross/Blue Shield of Massachusetts learned of this litigation, the AWP litigation?
A. If you are asking me, personally?
Q. Well, I am asking what you know.
A. I don't know -- I mean what I know is when I got a call from Steve Skwara, I mean.
Q. How long ago was that?
A. I don't know. Six weeks, a month, two months, eight weeks.
Q. Prior to that time, had you heard that there was a litigation or any litigations involving AWP?
A. No.
Q. Do you have an understanding of the term "AWP"?
A. Yes.

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Q. How long have you had that understanding?
A. Since I took over the provider reimbursement role and had to maintain, you know, the drug fee schedule. Since 2000.
Q. 2000?
A. Yes.
Q. What did you do at that time to gain an understanding of the term "AWP"?
A. It was more or less, you know, working with my people as they updated the drug fee schedules from the Medicare resource guides and Web sites.
Q. All right. And reviewing the Web sites, did you run across any correspondence or communications or discussion of the litigations involving AWP?
A. No.
Q. Do you have any understanding of the term -- of the allegations in this action?
A. I'm not quite sure what you are asking.
Q. Do you know what this case is about?

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A. Yes.
Q. In your view, what is this case about?
A. It is about the overinflation of AWP versus real costs.
Q. What do you understand the term "overinflation" to mean?
A. That the -- there is fat, if you will, in the AWP, AWP prices that are set by drug companies.
Q. Do you understand to what extent there is fat based upon plaintiffs' position in this litigation?
A. No.
Q. Based upon your position as a member of the provider reimbursement department, sitting here today, do you have a view as to whether or not you are misled as to the meaning of AWP?
A. I want to say my opinion is the AWP would be the bottom-line wholesale cost that would be -- providers could buy their drugs at.
Q. That is your view as a -- currently that is your understanding of the -- well --

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A. Well --
Q. Prior to your --
MR. HAAS: Strike that.
Q. Prior to your learning about this litigation a few weeks ago when you heard from your counsel, is it your position that you believed that the term AWP equalled the -- meant the average of actual wholesale prices paid in the marketplace?
A. No, because in 2004 when the whole Medicare started looking at it is when it started bubbling up then, and I became cognizant of it at that point in time.
Q. So in 2004, you obtained an understanding of the term AWP that differed from your earlier understanding?
A. Yes.
Q. Okay. Let's back up. When is the first time you heard the term AWP?
A. Probably in my provider contracting days.
Q. So at sometime around 2000?

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A. No. Back in my provider contracting.
Q. Provider contracting?
A. Mid '90s, just knowing AWP is average wholesale price.
Q. Okay.
A. Not knowing any more than that. Just what the acronym meant.
Q. At that point in time, you didn't have any understanding as to what the term meant other than --
A. Didn't need to know.
Q. Okay.
A. Wasn't in my, you know, my job at that point in time.
Q. Okay. Did there come a point in time when you obtained a better understanding or an understanding of the term AWP?
A. In 2000 when I started my role as the provider reimbursement manager.
Q. At that time, what was your understanding of the term AWP?
A. That that is the price at which

physicians purchased their drugs.
Q. So it was your understanding at the time that AWP represented an actual average wholesale price at which entities in the marketplace could acquire drugs?
A. Yes.
Q. Okay. Do you understand that that position is inconsistent with the position that plaintiffs have taken in this litigation?
A. In what way? I'm not -- no.
Q. Has anyone advised you or do you understand --
MR. HAAS: I withdraw that question.
Q. Do you understand that plaintiffs have taken the position in this litigation that it has long been widely known in the reimbursement industry that AWP did not equal the average of actual wholesale prices that entities purchased the drug in the marketplace?
MR. NOTARGIACOMO: I am going to step in and object. I may need to look at that question. I think you have something wrong.

MR. HAAS: I will take your stipulation on this point. If it is your position that plaintiffs' view in this litigation is that AWP was understood to mean at any time throughout the 1990s the average of actual wholesale prices paid, I will take that stipulation.
MR. NOTARGIACOMO: Now I am confused.
MR. HARRINGTON: I think I am just going to object to the question. I really don't want to get into a colloquy with anyone.
MR. HAAS: You can interject and give me your position or you can let the witness answer the question, because the question -- or object, and we can move on.
My question was, first I had asked the witness what his understanding of the term AWP was. My understanding of his testimony was that he took the position in 2000, he learned, he came to be aware, that the term AWP meant the average of actual wholesale prices paid.
BY MR. HAAS:
Q. Is that correct?

MR. HARRINGTON: He testified that was his understanding.
MR. HAAS: Okay.
BY MR. HAAS:
Q. And my question of him was whether or not you understand that plaintiffs have taken the position that it was widely known throughout the 1990s that AWP did not equal the average of actual wholesale prices.
MR. HARRINGTON: I object to the question.
You can answer if you know what the plaintiffs' position is on that issue.
A. I mean I have read some of the documents, so now I know.
Q. Well, really? What is your view as a member of the named plaintiff in this litigation as to what plaintiffs' position is in this litigation with respect to the meaning of the term -- of what payers understood AWP to mean throughout the 1990s?
MR. HARRINGTON: Objection. He is

asking you about the plaintiffs' position in this lawsuit, whether you understand what that is as to the meaning of AWP during the 1990s.
A. I mean I know what I have read. I guess that's, you know --
Q. Tell me what your interpretation is of what you read. What is -- let me go back.
A. I thought I already answered.
Q. Let me break it down into pieces. You didn't. Let me break it down into pieces.
You understand that Blue Cross/Blue Shield of Massachusetts recently has been added to this case as a named plaintiff in this litigation; right?
A. Yes.
Q. And in this case, plaintiffs have made allegations with respect to what payers, including health plans such as Blue Cross/Blue Shield of Massachusetts, understood the term AWP to mean in the 1990s. You understand that; correct?
A. Yes.
Q. What is your understanding of

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plaintiffs' position in this action with respect to payers' understanding of the term AWP throughout the 1990s?
MR. HARRINGTON: Objection. Go ahead.
A. Is that it wasn't reflective of the actual costs that physicians purchased drugs.
Q. Okay. Now let me clarify that answer. Is it your understanding that it is plaintiffs' position that the term AWP was understood to mean the average of actual wholesale prices paid?
MR. HARRINGTON: Well, objection. By whom?
MR. HAAS: By entities in the marketplace.
A. I guess I'm confused now. I am not understanding your question.
Q. Let's back up. We will break it down. I will keep going until we get to an understanding.
A. Yes.
Q. Am I correct that your testimony was that it was your understanding in 2000 that the

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term AWP, average wholesale price, meant the average of actual wholesale prices paid? Was that your understanding in 2000?
A. Yes. The fees at which we reimbursed our providers.
Q. Okay. You added something that was inconsistent with my question, so I will ask it again.
Was it your understanding in 2000 that the term AWP, average wholesale price, meant the average of actual wholesale prices paid?
A. I guess paid to who? That is where I am --
Q. I am asking what your understanding was. Okay? Let's just start with that point.
In 2000, what was your understanding of the term AWP, or average wholesale price?
A. It is the price that we would reimburse our providers, and it was the price at which we felt providers purchased their drugs at.
Q. Okay. So it is your understanding -- it was your understanding in 2000 that it was the

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price at which providers purchased their drugs; is that correct?
A. Yes.
Q. So, in other words, it is your position that you understood that Blue Cross/Blue Shield of Massachusetts was reimbursing providers at their average cost?
A. Yes.
Q. Okay. Is it your understanding as a member of Blue Cross/Blue Shield of Massachusetts that the plaintiffs in this litigation have taken the position that you just espoused as to the meaning of AWP throughout the 1990s?
MR. HARRINGTON: Well, I am going to object. Plaintiffs haven't taken any position as to what his understanding was in 2000.
MR. HAAS: That is not my question.
BY MR. HAAS:
Q. I mean you have espoused an understanding that you had in 2000 of the term AWP. My question is whether or not it is your understanding of the allegations in this case that

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plaintiffs have taken the position that payers understood throughout the 1990s that the term AWP, average wholesale price, meant the cost providers paid for drugs.
MR. HARRINGTON: The same objection. Go ahead and answer if you can.
A. I am just -- I don't know. I am getting confused.
Q. Where is the confusion? I mean it is a simple question. You gave me your understanding of the term in 2000 and --
A. You keep saying what is the plaintiffs' --
Q. Right.
A. -- which is --
Q. Listen. Let me clarify. I am simply asking what your understanding is of plaintiffs' allegations in this action. You are a member of a named plaintiff.
A. Um-hmm.
Q. I am asking --
MR. NOTARGIACOMO: Blue Cross/Blue

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Shield. You indicated that the witness was a member of plaintiffs, and I am clarifying that it was Blue Cross/Blue Shield that was a plaintiff.
BY MR. HAAS:
Q. If you don't know, that is fine.
A. All right.
Q. I am not trying to put words in your mouth. I am simply trying to get your position. And if you don't know, that is fine. I will move on. Okay?
You have told me what your understanding was in 2000 --
A. Um-hmm.
Q. -- of a term.
A. Yes.
Q. Now I am trying to seek your understanding of plaintiffs' position in this litigation as to that same term, and what I am trying to get an understanding of is whether or not you understand that your position -- that your understanding of the term in 2000 is the same position that plaintiffs are taking as to what the

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payers understood in the marketplace from 1991 to this litigation.
MR. HARRINGTON: Objection. Do you have an understanding as to what the plaintiffs, all the people making claims in this lawsuit, have taken as to a position of what they understood during the 1990s AWP represented?
THE WITNESS: No. I mean I haven't read --
MR. HAAS: Okay.
BY MR. HAAS:
Q. Then the answer is you don't have an understanding.
A. Okay.
Q. Let's push on that a little bit. Have you read the Complaint in this matter?
A. No.
Q. Okay. You have said you have an understanding with respect to the term -- well, let me back up.
So in 2000, it was your understanding that the term AWP equalled the average of actual

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costs of providers; correct?
A. Yes.
Q. Did there come a point in time when your understanding of the term, yours, changed?
A. Yes.
Q. When was that?
A. In 2003-2004.
Q. In 2003-2004, what new understanding of the term AWP did you acquire?
A. Is that providers actually had the ability to purchase drugs less than the AWP.
Q. How did you obtain that understanding?
A. Through the Medicare kind of review of this, the process that they used to go through their resetting their AWP fee schedules.
Q. Is that the understanding of AWP that you have today?
A. Is what the understanding?
Q. Is the understanding of AWP that you had in 2003-2004 the same understanding of the term that you have today?
A. Yes.

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Q. Have you had discussions with anyone at Blue Cross/Blue Shield of Massachusetts concerning the meaning of the term AWP?
A. No.
Q. So in 2003-2004, as a member of the provider reimbursement group, you learned that AWP was no longer, you know, from your perspective an average of actual wholesale costs but indeed was something greater than the costs that doctors paid for drugs; right?
A. Yes.
Q. At that point did you run to anybody and say, "We now have to reduce reimbursement, because we aren't in fact reimbursing at actual cost"?
MR. HARRINGTON: What is the time frame on that question?
MR. HAAS: What he just testified to, 2003-2004.
A. Well, we did that analysis, which was part of, you know, looking at how our drug fees were set.
Q. Right. And in connection with that

analysis, did you say, "Wait a second here. We have to reduce our reimbursement because we are all defrauded and misunderstood the meaning of this term"?
MR. HARRINGTON: Objection. Go ahead.
A. No.
Q. Did you tell anybody, did you have any discussions with anybody at that point in time concerning the fact that for the last four or five years as a member of the provider reimbursement department you were misled as to the meaning of the term AWP?
A. I mean when we did the analysis, I think that's when it pretty much came to light as to --
Q. My question specifically goes to communications you had.
MR. HARRINGTON: Well, let him complete his answer, though.
Q. If you have anything to add, go ahead.
A. That is when we started scrutinizing the drug reimbursement files that we were getting from Medicare.

Q. I understand that.
A. Yes.
Q. My question is whether you had any conversations with anyone at that time in 2003-2004 where you said, "Wait a second here. I have been misled for the last four or five years in connection with setting and determining the reimbursement for physician-administered drugs"?
A. No.
Q. Were you aware of anybody else who had that type of discussion at Blue Cross/Blue Shield of Massachusetts at this time?
A. I was not aware.
Q. All right. And indeed, in determining whether to change the reimbursement rates in 2004 for 2005, Blue Cross/Blue Shield of Massachusetts didn't decide to reduce reimbursement; they decided to maintain the reimbursement at the current levels; correct?
A. Yes.
MR. HAAS: Let me just take a five-minute break. Off the record.

(Discussion off the record, followed by recess taken at 3:35 p.m.)
(Recess ended at 3:44 p.m.)
MR. HAAS: Back on the record.
Let's mark this.
(Multipage Analysis of CMS Average Wholesale Price Reform, Reimbursement for Part B Drugs marked Exhibit Mulrey 002 for identification.)
MR. HARRINGTON: This is Exhibit Mulrey 002?
MR. HAAS: Yes.
BY MR. HAAS:
Q. Mr. Mulrey, we have marked as Deposition Exhibit Mulrey 002 a document entitled "Analysis of CMS Average Wholesale Price Reform, Reimbursement for Part B Drugs." It is dated February 7, 2004. It has got handwriting on it. Up in the right-hand corner, it says 2-7-05.
I will represent to you that this was produced to us from the plaintiffs. Otherwise,

that is the extent of my knowledge of the document.
Are you familiar with this document?
A. Yes.
Q. Is this the -- a presentation you prepared?
A. Yes.
Q. Was this presentation prepared following your analysis that we just discussed?
A. Yes.
Q. Was this presentation prepared at or around February 7, 2004?
MR. HARRINGTON: Well --
A. I think it is '05. I think that date is incorrect.
Q. All right. Was this presentation shown to the members of the provider financial strategy work group?
A. Yes.
Q. Was it shown to anyone else?
A. I'm not aware if it was shown to anybody else.

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Q. All right. Is this your handwriting on the document?
A. Yes, it is.
Q. So this was produced from your files?
A. Yes.
MR. HAAS: Just for the record, there is some sections of this, for example, page 7, page 8, that, because it was produced in hard copy format and was copied, that it is illegible. We request that an electronic version or a legible version be produced.
MR. HARRINGTON: We will see what is available.
BY MR. HAAS:
Q. Do you maintain a copy of this document on your system electronically?
A. Yes. I should probably have a copy someplace.
Q. What does the handwriting on the left-hand side of the cover page say?
A. "D. Devaux feels no real appetite to follow Medicare's lead at this time."

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Q. That is senior vice president Deb Devaux?
A. Yes.
Q. Was she the ultimate decision-maker on this project?
A. No.
Q. Okay. And in the upper right-hand corner, it says, "2-7-05 presented to PFSW." Is that the provider financial strategy work group?
A. Yes.
Q. On page 5 of this, if you would turn with me to page 5.
(Witness complying.)
Q. In the first bullet point, it states, "The ASP pricing changes will have adverse effects on physician organizations' profitability in particular oncology/ hematology physician organizations."
Do you see that?
A. Yes.
Q. Aside from the source that you cited at the bottom of the page, which is the Committee on

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Ways and Means, did you review any other documentation or materials to obtain an understanding with respect to that point?
A. No.
Q. The second bullet point says, "M.D. fee schedule payments for oncologists and other specialities are increased to accurately pay M.D.s for the cost of administering drugs."
What do you mean by that?
A. Coming out of the same source and saying they are going to increase the payment level for the administration side.
Q. They were saying they were doing that in order to compensate for the inadequate, "they" being Medicare --
MR. HAAS: Withdraw that.
Q. The source stated, am I correct, that Medicare was increasing the payments for services associated with administration of drugs because historically they had been inadequate to compensate doctors for those costs; correct?
MR. HARRINGTON: Well, objection.

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A. That's what the source said, so.
Q. Did you discuss these two points as a group, as a whole?
A. We walked through the whole presentation.
Q. All right. Did you discuss with the group whether -- what other people's views were with respect to whether ASP pricing would have an adverse effect on physician organizations' profitability?
A. Not directly with anyone.
Q. All right. So in connection with your group meetings of the financial strategy workshop, no one assessed independently what the impact of the ASP pricing change may or may not have on physician organizations' profitability?
A. You can see from the analysis it was done on a network-wide basis and then broken down by different provider specialties.
Q. This analysis that you did was based upon what information?
A. The analysis was based on Medicare's ASP

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pricing and our utilization for the drugs.
Q. All right. Did you or anyone on the financial strategy work group attempt to assess the profitability of providers in connection with determining the impact of this change in reimbursements on that profitability?
A. Are you asking profitability on an individual physician basis?
Q. Or in general. My question is whether or not that was a consideration of the financial work group. I understand that your analysis involved the assessment of essentially the revenue component to the doctors, the reimbursement, which was based upon your data. My question is something different, though. This point goes to physicians' profitability.
So my question is: Did anybody in your group, the financial strategy work group, attempt to assess in any way the impact of the change on physicians' profitability?
A. I think that is what this whole analysis gets to is if there is a reduction in payment it

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is going to affect their profitability.
Q. Okay. Let me ask it a different way.
Did anyone discuss the extent of the profitability of the clinics and whether or not after the change whether clinics would be underwatered with respect to reimbursement of drugs, for example, or earn less margin?
A. No. Now you are throwing the word "clinic" in there, and you have got me a little confused. That is the health centers. You are talking the physician organizations, a physician?
Q. Yes.
A. Did we look at the profitability of these physicians at a group or at an individual level?
Q. Yes.
A. No.
Q. Okay. For example, Steve Fox was the director of provider relations; right?
A. Yes.
Q. He was a member of the financial strategy work group; right?

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A. Yes.
Q. Did Mr. Fox communicate in these meetings any views of providers as to how this potential change in reimbursement or in fact change in reimbursement was impacting or would impact the profitability?
A. I mean I can't recall, you know, the exact discussions. This was well over a year ago. But, yes, there was discussion around the table on a lot of different things that were in this analysis.
Q. Okay. Did -- were there minutes taken of these meetings?
A. There might have been. I would have to check. Not every time do meetings -- meeting minutes get produced.
Q. Who was the secretary or who took the minutes?
A. It might have been Michelle McDonough. She is not listed there.
Q. Who is Michelle McDonough?
A. She was just a kind of an analyst that -

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- kind of a coordinator of the meetings and making sure they were on.
MR. HAAS: We would request that those minutes be produced.
MR. HARRINGTON: If they exist, we will examine them and determine if they should be produced for this meeting.
BY MR. HAAS:
Q. In connection with this analysis when you had the epiphany with respect to the meaning of AWP and you learned the Medicare's position with respect to the inadequacy of servicing fees, did you go back and review any of the government reports at that time concerning this issue?
MR. HARRINGTON: I object to the form. Go ahead.
A. I read literature, you know. I can't say how far back, you know, some of it was, I mean, but I started reading more about the issue itself.
MR. HAAS: Mark this.
(Multipage Excessive Medicare

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Payments for Prescription Drugs marked Exhibit Mulrey 003 for identification.)

BY MR. HAAS:

Q. We have marked as Deposition Exhibit Mulrey 003 a document titled "Department of Health and Human Services, Office of Inspector General, Excessive Medicare Payments for Prescription Drugs" dated December 1997.

(Handing Exhibit Mulrey 003 to the witness.)

Q. Was this one of the documents that you reviewed?

(Pause.)

(The witness viewing Exhibit Mulrey 003.)

A. I can't recall.

Q. Okay. Let me see if I can refresh your recollection. If you would turn to page little i, which is the executive summary page 1, it states as the purpose of this report "to compare Medicare allowances for prescription drugs with drug

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acquisition prices currently available to the physician and supplier communities."

Do you recall reviewing any survey or study involving a comparison of the Medicare reimbursement allowed amounts with the cost to physicians?

A. No.

Q. Okay. If you would turn with me to page 3 of the report itself.

(Witness complying.)

Q. Here it is talking about the methodology followed. The heading at the bottom of the page says, "Carrier Allowances for Prescription Drugs," and if you just take a look at the paragraph, it basically says that to determine the allowed amount, the OIG went out to the carriers, the Medicare carriers, to determine the amounts, allowed amounts paid for drugs.

Do you see that?

A. What paragraph is that?

Q. It is page 3.

A. Yes.

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Q. At the bottom of the page under the heading "Carrier Allowances for Prescription Drugs."

A. Yes.

Q. First paragraph.

A. Okay.

(Pause.)

(The witness viewing Exhibit Mulrey 003.)

Q. Once you have reviewed that, the question will be: Do you recall reviewing at this point in time any documents that concerned studies of Blue Cross/Blue Shield of Massachusetts and involved information from Blue Cross/Blue Shield of Massachusetts concerning the reimbursement of drugs versus the cost of drugs?

A. No.

Q. Turn with me to page 10 of the report.

(Witness complying.)

Q. Under the heading "Recommendations," the second sentence states that, quote, "The published AWPs that are currently being used by Medicare-

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contracted carriers to determine reimbursement bear little or no resemblance to actual wholesale prices that are available to physicians and suppliers that bill for these drugs," end quote.

Do you see that?

A. Yes.

Q. This is dated December 1997. Do you recall reviewing materials that showed back as early as 1997 or earlier that the government was well aware that AWP bore little or no resemblance to AWP?

A. No. I'm not aware of it.

Q. Do you recall reviewing any studies similar to this?

MR. HAAS: Withdraw that question.

Q. Do you recall reviewing any studies that made similar findings?

A. Just, you know, what went into this presentation here.

(The witness pointing to Exhibit Mulrey 002.)

Q. So what you are referring to is just

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what is in this presentation here, are you referring just to the source cited?
A. This is what we used as the basis for the presentation.
Did I go back and find this document.
(Pointing to Exhibit Mulrey 003.)
A. No.
Q. Let me back up. I thought you had testified that you reviewed a number of materials in connection with this project?
A. Yes. But --
Q. Let me ask it this way. What else did you review?
A. I can't recall. I mean there was a host of, you know, whether they were Medicare- type reports and other information that was out there that we reviewed. I mean I don't have any of it here in front of me.
Q. Do you have copies of it in your files?
A. I don't know. I would have to go back and look. I don't know that.
Q. Do you have a file that is devoted to

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this particular project, the analysis that you did with respect to the CMS AWP form?
A. Yes.
Q. Okay.
MR. HAAS: We request that that folder and any documentation, including any studies and surveys reviewed, be produced.
Q. Is it your position that Blue Cross/Blue Shield was misled because doctors and manufacturers perceived the marketplace into believing that AWP bore some resemblance to AWPs?
MR. HAAS: Did I say that right?
MR. HARRINGTON: I object to the form.
MR. HAAS: I didn't. I'm not sure what I said. I will try it again.
BY MR. HAAS:
Q. Is it your position in this litigation that Blue Cross/Blue Shield of Massachusetts was misled by doctors and manufacturers by publishing AWPs that bore little or no resemblance to AWPs?
MR. HAAS: Did I say that right again?
MR. NOTARGIACOMO: You said AWPs to

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AWPs.
MR HAAS: I did it twice.
MR. HARRINGTON: Objection.
MR. HAAS: It happens late in the day.
(Laughter.)
MR. HAAS: Let me try it one more time. Okay.
BY MR. HAAS:
Q. Is it your position in this litigation that Blue Cross/Blue Shield of Massachusetts was misled by doctors and manufacturers through the publication of AWPs that bore little or no resemblance to actual acquisition costs at which doctors purchased drugs?
MR. HARRINGTON: Objection.
A. I mean --
Q. I am asking your position.
A. My position? It is not --
MR. HARRINGTON: If you have one.
A. -- the company's or anything? Yes.
Q. Okay. Does the fact that this document that you have just been shown, that is marked

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Deposition Exhibit Mulrey 003, which is a report by the Office of Inspector General of the HHS, which was publicly published in 1997 and that concludes AWPs have little or no resemblance to actual wholesale prices in any way impact your decision or view as to whether or not manufacturers and doctors misled payers such as Blue Cross/Blue Shield of Massachusetts?
A. Say that again.
Q. I just showed you a document.
A. Yes. I saw it.
Q. Right?
A. Right.
Q. And you looked at it?
A. Right.
Q. And you know who the Office of Inspector General of HHS is?
A. Yes.
Q. And you know that they put these studies up for the world to see?
A. Yes.
MR. HARRINGTON: Objection.

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Q. And you know that, having reviewed this, that they concluded in 1997 that they knew full well that AWP did not bear any relationship whatsoever to the actual wholesale prices paid; right?
A. Yes.
Q. Well, does this document impact your view at all as to whether or not Blue Cross/Blue Shield of Massachusetts was in fact misled, say after 1997, with respect to the meaning of the term AWP?
MR. HARRINGTON: Objection. Go ahead.
A. Yes.
Q. It does impact your view. How does it impact your view?
A. That what I -- we thought we were paying for physicians' drugs was actually higher than what they could purchase them at.
Q. Is it your view that nobody at Blue Cross/Blue Shield that was responsible for setting reimbursement had any awareness of this publicly-disclosed document?

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A. I can't speak to that.
Q. Okay. Would it change or impact your view at all if you knew that there were similar reports that were published in 1984 and in 1992 by the Office of Inspector General of the HHS?
MR. HARRINGTON: The same objection. Go ahead.
A. I mean I don't know how to --
MR. HARRINGTON: Do you understand the question?
THE WITNESS: No.
BY MR. HAAS:
Q. Would it affect your view that Blue Cross/Blue Shield was misled somehow as to the meaning of the term AWP into believing that it meant the actual average of wholesale prices if the Office the Inspector General of the HHS published studies in 1984 and in 1992 and in 1997, each that concluded that the AWPs published bared no resemblance and are not predictable of the actual average wholesale prices paid by doctors?
MR. HARRINGTON: Objection.

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Do you understand what he is asking?
THE WITNESS: I think I am -- I am just getting confused. It is getting late.
Could you restate it? Sorry.
BY MR. HAAS:
Q. I am trying to save time --
A. Yes.
Q. -- and rather than show you a bunch of documents, I am asking, trying to cut to the quick, and saying if I showed you more documents, one from 1984, one from 1992, that reach the same conclusion, i.e., that AWP did not bear any predictable relationship to the prices actually paid by doctors, --
A. Um-hmm.
Q. -- if you were shown those documents, would you -- would that in any way impact your view as to whether or not manufacturers and doctors conspired to mislead and that Blue Cross/Blue Shield of Massachusetts -- and that Blue Cross/Blue Shield of Massachusetts was in fact misled by the publication of AWPs?

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MR. HARRINGTON: Objection.
Q. Does it impact your view?
MR. HARRINGTON: Do you understand what he is asking?
THE WITNESS: Can you help me here?
MR. HARRINGTON: Well, let me try this.
Does looking at this Inspector General study or if you looked at other studies that were similar that were earlier in time change your view that you were misled by the doctors' and manufacturers' AWPs?
THE WITNESS: Change my view that AWP is inflated pricing and that doctors can obtain the drugs at a lower dollar value?
MR. HAAS: That Blue Cross/Blue Shield was misled.
MR. HARRINGTON: Right.
Does it -- do these documents change your conclusion that you were misled?
THE WITNESS: Yes.
BY MR. HAAS:
Q. How so?

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A. We're pricing our claims based off of AWP, which we thought was the cost that physicians purchased drugs, and they are in some instances acquiring the drugs at a lower cost.
Q. So I think the answer which you are taking the position of no, that these documents don't change your position?
MR. HARRINGTON: I think I have confused him as much as you did.
Q. Let me ask you one simple question. How is it that Blue Cross/Blue Shield of Massachusetts could be misled as to the meaning of AWP and to believing allegedly that AWP equalled the average of actual wholesale costs when it was publicly known and published since 1984 and even earlier that AWP did not bear a predictable relationship or any relationship to the actual prices paid by doctors?
MR. HARRINGTON: Objection.
A. No. It wouldn't. I mean we rely on nationally-accepted standards in applying some of our reimbursement. Utilizing AWP that Medicare

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had out there was one of those source that we could use.
Q. All right. And my question is how is it that Blue Cross/Blue Shield could be misled if they relied on Medicare, and Medicare in fact knew and it was published publicly that AWP did not equal the average of actual wholesale costs?
MR. HARRINGTON: Well, I am going to object again. He has already testified that he has no knowledge that anybody at Blue Cross saw any of these.
THE WITNESS: Right.
MR. HAAS: That is going to be my next question, because I asked him if he would change his view if he saw these, and he said no, it wouldn't change his view. So my followup question is how is that possible.
BY MR. HAAS:
Q. How is it in your view, what is your explanation, as to how Blue Cross/Blue Shield of Massachusetts could be misled if it was publicly published that AWP did not equal the average of

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actual wholesale costs?
MR. HARRINGTON: The same objection.
A. I don't know, you know, if anybody realized it at that point in time.
Q. Okay. So it is your position that if someone at Blue Cross/Blue Shield had in fact read these documents they would have understood that AWP did not equal the average of actual wholesale costs; correct?
A. Potentially, yes.
Q. So the ultimate determination as to whether or not Blue Cross/Blue Shield was misled in your view depends upon whether or not anybody was apprised of this information that was publicly available?
MR. HARRINGTON: The same objection. Go ahead.
A. Yes.
MR. HAAS: Off the record.
(Discussion off the record.)
MR. HAAS: Back on the record.
BY MR. HAAS:

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Q. Let me back up. We were talking about R.J. Health, and you had testified that R.J. Health set -- now sets the reimbursement amount for physician- administered drugs that are incorporated into the Blue Cross/Blue Shield of Massachusetts fee schedules; correct?
A. Yes.
Q. Okay. How do you know that R.J. Health calculates that amount as a percentage of AWP?
A. There is some data that they have -- they share that shows their -- their I guess calculation, if you will, or how they develop AWP.
Q. They share that information with you?
A. We have, yes.
Q. Does that information show the source of the AWP utilized by R.J. Health?
A. "The source," meaning?
Q. R.J. Health, meaning where do they get it from?
A. Like what compendiums and such?
Q. Yes.
A. Yes.

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Q. What compendia does R.J. Health use to obtain the AWP that Blue Cross/Blue Shield of Massachusetts to calculate --
MR. HAAS: Let me withdraw that question.
Q. What compendia does R.J. Health use to get the AWP that is used to calculate the reimbursement amount incorporated into Blue Cross/Blue Shield of Massachusetts' fee schedules?
A. I don't know off the top of my head.
Q. Is that reflected in documents in your files?
A. I don't think those are -- have been produced.
Q. Right.
A. The --
Q. Do you maintain copies of those documents in your files?
A. Of how R.J. Health develops their AWP?
Q. Yes.
A. Yes.
MR. HAAS: We request that they be

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produced.
BY MR. HAAS:
Q. Okay. The second aspect of your responsibilities that you had mentioned was analysis of various fee schedules. What does that entail?
A. On an annual basis, we look at our reimbursement that we make to physicians for services that are based on RBRVS, so it is not drug related.
Q. What is the purpose of that analysis?
A. It is to update the RVU rates based on the change each year that comes out from Medicare.
Q. In your role, do you have any interaction with physicians?
A. No.
Q. In your role, do you have any involvement in analyses with respect to specialty pharmacies and whether Blue Cross/Blue Shield should adopt a specialty pharmacy model for the reimbursement of physician- administered drugs?
A. No.

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Q. Have you ever had any involvement with the specialty pharmacy model?
A. We have one, I mean, at Blue Cross.
Q. What involvement, if any, have you had with respect to the specialty pharmacy?
A. Just sit on a work group.
Q. What is that work group?
A. The specialty pharmacy work group.
Q. Okay. What does that group do?
A. I think you probably will get the best information from John Killion.
Q. What is your role in that work group?
A. A support role.
Q. Do you do analyses?
A. No.
Q. Have you attempted to ascertain in connection with your work on the group what the impact the specialty pharmacy model would have on Blue Cross/Blue Shield of Massachusetts' business?
A. Again I default to John to answer those.
Q. I have no problem asking John all the questions --

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A. Yes.
Q. -- and I have no problem moving past this. What I need to know is what it is exactly that you do so I can ask you about what you do.
A. It is more operation oriented, what he puts in place we can administer through the claims system.
Q. What does that mean?
A. That if he is contracting with a particular provider, that he can set up the provider ID, you know, we get him set up in the system and get his claims through the system appropriately and set up with all the bells and whistles that he needed.
Q. When did Blue Cross/Blue Shield of Massachusetts put into place a specialty pharmacy?
A. You can talk to John. It has been probably two years --
Q. Two years?
A. -- but John would have the definitive date.
Q. Do you have an understanding of how

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reimbursement is provided --
MR. HAAS: Withdraw that.
Q. Do you have an understanding of the reimbursement that is provided to specialty pharmacies -- to the specialty pharmacy for drugs provided to physicians?
A. A discount off AWP.
Q. What is the amount of that discount?
A. Excuse me?
Q. What is the amount of that discount?
A. I -- again it would vary, I think, by different providers.
Q. Focusing operationally, how is that reimbursement effected? Is it managed through a fee schedule? Is it done through some sort of claims submission? How is it managed?
A. It is done through claims submission and coding in the system that would, you know, take an AWP and reduce it or increase it, whatever the discount it would be reduced.
Q. Where does Blue Cross/Blue Shield of Massachusetts obtain that AWP from?

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A. Talk to John.
Q. What I am struggling with here is to get an understanding of what do you mean when you say you just handled the operations aspects of it.
A. I handle, once he has negotiated his deals, all right, and he has his discounted amount, he turns that over to me. We will get the providers set up, and we will code the system to say for this particular provider, we're going to apply this discount.
Q. Isn't it -- first of all, who is the specialty pharmacy that Blue Cross/Blue Shield of Massachusetts works with?
A. There are a couple. I mean they are kind of more -- again can I just let John get into that? I mean because --
Q. Is he --
A. He -- it is his bailiwick, if you will.
Q. What I am not understanding is what it sounded like you are saying is you are in charge of the operations, but it sounded like you testified that the reimbursement for drugs

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administered by physicians that they acquire from the specialty pharmacy is provided to the provider, which is inconsistent with my understanding of how it works. So that is why I need to probe a little bit. I apologize. I know it is late. I know we are going to talk to him about it, and I don't want to be redundant, but at the same time, you're the operations person, and I need to know how it works.
A. The contracts that I know he has out there today, he has a home infusion contract with a particular provider. There is a discounted fee schedule for his drug reimbursement.
It is not, as far as I know, and John can, you know, because I have been somewhat removed from this for a while, it is not physicians that are getting this.
Q. Fine.
A. All right.
Q. That is an easy way to cut through this.
A. All right.
Q. To your knowledge, does Blue Cross/Blue

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Shield of Massachusetts have any relationship with specialty pharmacies to provide drugs to doctors for the administration to --
A. To my knowledge, no, I'm not aware of that.
Q. Okay.
MR. HAAS: Off the record.
(Discussion off the record, followed by recess taken at 4:26 p.m.)
(Recess ended at 4:32 p.m.)
MR. HAAS: Back on the record.
BY MR. HAAS:
Q. We were talking about what has been marked as Deposition Exhibit Mulrey 002, the analysis of the CMS reform, and you indicated that it was not in Blue Cross/Blue Shield of Massachusetts' interest at this time to change to an ASP environment. Why is that?
A. Our thought process there is that we were waiting to see if this is an industry-acceptable payment methodology.
Q. Does Blue Cross/Blue Shield of

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Massachusetts have the concern that if it reduces reimbursement now it will -- it runs the risk of losing providers from its network?
A. That could be one concern. Yes.
Q. Is it important for Blue Cross/Blue Shield of Massachusetts to maintain a robust network of physicians?
A. Yes.
Q. And is maintaining a robust network of physicians one way that Blue Cross/Blue Shield of Massachusetts competes with other health plans?
A. Yes.
Q. Who are the major competitors of Blue Cross/Blue Shield of Massachusetts?
A. Harvard Pilgrim Healthcare, Tufts, are the three local plans.
Q. What about Cigna?
A. They are a competitor, but they don't have a big market share in Massachusetts.
Q. Who has the largest market share in Massachusetts?
A. Blue Cross.

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Q. How large is it relative to the other players?
A. I don't know the actual percentage breakdowns.
Q. Have you been involved at all in the process of competing for customers of Blue Cross/Blue Shield of Massachusetts?
A. Have I personally?
Q. Yes.
A. No.
Q. Do you have an understanding of how the process works?
A. No. Not truly.
Q. Okay. Has Blue Cross/Blue Shield of Massachusetts always been the dominant player in Massachusetts?
A. I'm not certain.
Q. For the time you were in the company, has it always been important for Blue Cross/Blue Shield to maintain a robust network of providers for competitive purposes?
MR. HARRINGTON: I object to the form.

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A. Yes.
Q. How vigorous is the competition in this marketplace? Is it significantly competitive?
MR. HARRINGTON: I object to the form.
A. I -- you know, I don't know, I mean it is not my area of expertise.
Q. Okay. Are you familiar with a litigation pending in Florida referred to as the in re: Managed Care Litigation or perhaps the Thomas matter?
A. I have heard of the Thomas litigation. Heard of it.
Q. Okay. What involvement, if any, have you had in the Thomas litigation?
A. None.
Q. Were you aware that in September -- on September 28, 1994, Blue Cross/Blue Shield of Massachusetts paid $2.7 million to the federal government to settle allegations of Medicare fraud?
MR. HARRINGTON: I object to the form.
A. No.

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Q. So you have never had any involvement in that --
A. No.
Q. -- issue?
A. Yes.
MR. HAAS: I have no further questions at this time.
MR. HARRINGTON: I have a few followups. I don't know if the attorney on the phone has any questions.
MR. HAAS: Lorianne?
MS. TREWICK: Yes, I am here.
MR. HAAS: Do you have any followup questions at this point?
MS. TREWICK: No, I don't. Thank you.
MR. HAAS: I am going to turn it over to plaintiffs.
MR. HARRINGTON: Sure. This will just take a few minutes.
CROSS EXAMINATION
BY MR. HARRINGTON:
Q. Let me direct your attention, Mr.

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Mulrey, to page 5 of Exhibit Mulrey 002, which Attorney Haas was asking you some questions about.
(Witness complying.)
Q. Did the information that you put on page 5 of Exhibit Mulrey 002 come from a committee report of Congress that was prepared in 2004?
A. Yes.
MR. HAAS: Objection to form.
Q. And what was the Congressional committee report that was the basis of the information that is on page 5 of Exhibit Mulrey 002?
A. What was the -- say that one?
Q. Could you tell us what the title or source of the report was that gave you the information that appears on page 5 of Exhibit Mulrey 002?
A. It is footnoted down here. That is what you are looking for?
Q. Yes.
A. The Committee of Ways and Means, Medicare Prescription Drug, Improvement, and Modern -- I can't say it -- Act of 2003, Chairman

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Bill Thomas, 2-26-04.
Q. Okay. Is it your understanding that as a result of that work of that Congressional committee the recommendation was made that Medicare change its reimbursement structure beginning January 1, 2004, to reimbursement structure?
MR. HAAS: Objection to form.
MR. HARRINGTON: Let me rephrase that. I guess I said reimbursement structure twice.
Q. Is it your understanding that as a result of findings like those on page 5 of Exhibit Mulrey 002 that Medicare made its proposal to go to ASP reimbursement?
A. Yes.
MR. HAAS: Objection to form.
Q. And when you did the analysis of ASP reimbursement with the increase in administration fees that Congress recommended, quote, "to accurately pay M.D.s for the cost of administering drugs," unquote, what was the net effect of the reduction in price from AWP to ASP based and the

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increase in administration fees that Congress recommended for accuracy purposes?
MR. HAAS: Objection to form.
A. We are looking at page 7?
Q. Yes.
A. The $6 million.
Q. And what does that $6 million represent?
A. The total reimbursement for drugs and administrative fees.
Q. All right. And after the decrease in drug reimbursements by going from AWP-based reimbursement to ASP-reimbursement and the increase in administration reimbursements that Congress wanted to create a more accurate reimbursement, would Blue Cross be paying $6 million more or $6 million less per year for these total reimbursements?
MR. HAAS: Objection to form.
A. Six million less.
Q. Thank you.
MR. HARRINGTON: That's all I have.
MR. HAAS: I have got a followup

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question. I am just trying to understand. Just give me a second.
REDIRECT EXAMINATION
BY MR. HAAS:
Q. If I understand your testimony, are you testifying -- have you testified that it was your conclusion based upon your analysis that had Blue Cross/Blue Shield of Massachusetts changed to an ASP methodology it would have saved $6.9 million in 2004?
A. Yes.
Q. Okay. But Blue Cross/Blue Shield of Massachusetts in fact decided not to change its reimbursement despite the fact that it stood to save 6.9 million; correct?
MR. HARRINGTON: Well, objection. I think you are misreading the number.
MR. HAAS: I am just asking what he testified. That is why I asked the first question.
Let me back up and do it again.
BY MR. HAAS:

Q. How much, based upon your analysis, did Blue Cross/Blue Shield of Massachusetts stand to gain by switching methodologies?
A. Gain? It is -- it is -- it is a -- I mean it is a negative. It wasn't a gain. It was going to be a decrease in the drugs and an increase in the drug administration --
Q. Oh.
A. -- cost and overall net decrease. I mean what is missing here again is the titles.
Q. Yes. That is why I am asking the question. I can't read because this is blacked off.
A. I can't even recall the titles to be honest with you.
Q. Let me ask it this way. Did you conclude from your analysis of this switch in reimbursement from AWP to ASP that overall Blue Cross/Blue Shield of Massachusetts would pay more under the ASP regime or less?
A. Less.
Q. Okay. And even though it would have

paid less, i.e., saved money, Blue Cross/Blue Shield of Massachusetts elected not to switch reimbursement regimes; right?
A. At this time.
Q. Now you were asked a couple of questions with respect to what the impact was under Medicare under the switch to the ASP reimbursement regime and whether or not the overall payments went up or down. Did you have an understanding of the U. S. -- of Medicare's demonstration project when you answered those questions?
A. Medicare's demonstration? Can you clarify that?
Q. Well, that is why I am asking the question.
A. All right.
Q. You testified with respect to the impact of the change of reimbursement from 2004 to 2005. A component of that was the demonstration project. So I queried whether or not you are familiar with that project.
A. That Medicare was going to add some

codes and reimburse some oncology?
Q. Right.
A. Yes.
Q. Did you factor that in your analysis in determining what the overall impact was from 2004 to 2005 under Medicare?
MR. HARRINGTON: Objection.
A. I want to say no --
Q. All right.
A. -- because the codes didn't exist at the time the analysis was run.
MR. HAAS: No further questions.
MR. HARRINGTON: Thank you.
MR. HAAS: We are off the record. Okay, Lorianne?
MS. TREWICK: Yes. I am here. Okay.
MR. HAAS: We are going off the record.
(Whereupon, at 4:44 p.m., the deposition was adjourned.)

_____
MICHAEL T. MULREY

Subscribed and sworn to and before me this _____ day of _____, 20____.

_____
Notary Public

CERTIFICATE

Commonwealth of Massachusetts
Plymouth, ss.

I, Judith McGovern Williams, a Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, do hereby certify:

That MICHAEL T. MULREY, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the said witness.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2006.

Judith McGovern Williams
Registered Professional Reporter
Certified Realtime Reporter
Certified LiveNote Reporter
Certified Shorthand Reporter No. 130993

My Commission expires:
April 2, 2010